

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BUSH TRUCK LEASING, INC.,)	Case No. 1:20-cv-00511-SJD-KLL
)	
Plaintiff,)	Judge Susan J. Dlott
)	
-v-)	Magistrate Judge Karen L. Litkovitz
)	
ALL WAYS AUTO TRANSPORT, LLC,)	
)	
Defendant.)	
)	
)	
)	

**BUSH TRUCK LEASING, INC.’S ANSWER TO
DEFENDANT ALL WAYS AUTO TRANSPORT, LLC’S COUNTERCLAIMS**

For its Answer to the non-dismissed counterclaims of Defendant / Counterclaim-Plaintiff All Ways Auto Transport, LLC (“AW”), Plaintiff / Counterclaim-Defendant Bush Truck Leasing, Inc. (“BTL”), states as follows:

ANSWER

The numbered paragraphs below correspond to the paragraph numbers contained in AW’s Counterclaims. The headings used match those chosen by AW—they are included for ease of reference only and do not constitute any admission. BTL generally denies all allegations contained in the Counterclaims not expressly and specifically admitted, including all allegations contained in the headings and prayers for relief.

INTRODUCTION

1. BTL denies the allegations in paragraph 1 of the Counterclaims.
2. BTL lacks knowledge or information sufficient to form a belief as the truth of the allegations in paragraph 2 of the Counterclaims.

3. BTL lacks knowledge or information sufficient to form a belief as the truth of the allegations in paragraph 3 of the Counterclaims.

4. BTL admits that in October and November of 2016 it had a maintenance program that was available to qualified and approved drivers who entered into maintenance agreements (“Maintenance Agreements”) with BTL. BTL refers to those Maintenance Agreements for their exclusive terms, and denies all allegations inconsistent with their complete terms. BTL denies the remaining allegations in paragraph 4 of the Counterclaims.

5. BTL denies the allegations in paragraph 5 of the Counterclaims.

6. BTL lacks knowledge or information sufficient to form a belief as to the reasons certain unnamed drivers purportedly referenced in paragraph 6 allegedly “often just left AWA.” BTL denies the remaining allegations in paragraph 6 of the Counterclaims.

7. BTL admits that AW seeks to recover “damages,” denies that AW is entitled to recover any amount of damages, and denies that BTL is liable for any a set forth in paragraph 7 of the Counterclaims. BTL denies the remaining allegations in paragraph 7 of the Counterclaims.

COUNT I: FRAUD

8. BTL lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Counterclaims.

9. BTL admits the allegations in paragraph 9 of the Counterclaims.

10. BTL admits that in or about November of 2016, it entered into a Program Agreement with AW. BTL refers to the Program Agreement for its exclusive terms, denies all allegations in paragraph 10 that are inconsistent with its complete terms, and denies the remaining allegations in paragraph 10 of the Counterclaims.

11. BTL denies the allegations in paragraph 11 of the Counterclaims.

12. BTL admits that on or about November 1, 2016, Michael Bush e-mailed “marketing material” for BTL’s maintenance program (the “Capabilities Brochure”) to AW. BTL refers to that email and the Capabilities Brochure for their exclusive terms, denies all allegations in paragraph 12 that are inconsistent with the complete terms of those documents, and denies the remaining allegations in paragraph 12 of the Counterclaims.

13. BTL admits that on or about November 3, 2016, Michael Bush e-mailed BTL’s “Program Guide” to AW. BTL refers to that email and the Program Guide for their exclusive terms, denies all allegations in paragraph 13 that are inconsistent with the complete terms of those documents, and denies the remaining allegations in paragraph 13 of the Counterclaims.

14. BTL admits that it entered into lease agreements (the “Leases”) with one or more of AW’s qualified and approved drivers (the “Drivers”), and that one or more of the Drivers separately entered into maintenance agreements (the “Maintenance Agreements”) with BTL. BTL refers to those Lease Agreements and Maintenance Agreements for their exclusive terms, denies all allegations in paragraph 14 that are inconsistent with the complete terms of those agreements, and denies the remaining allegations in paragraph 14 of the Counterclaims.

15. BTL admits that Exhibit 3 to AW’s Counterclaim includes an unsigned Lease Agreement and Maintenance Agreement. BTL refers to those unsigned documents for their exclusive terms, denies all allegations in paragraph 15 inconsistent with the complete terms of those documents, and denies the remaining allegations in paragraph 15 of the Counterclaims.

16. BTL admits that from in or about 2016 and through 2020 it maintained a website address at <https://www.bushtrucks.com/index.php/pages/maintenance>. BTL refers to that website address and its content for their exclusive terms, denies all allegations in paragraph 16 inconsistent with their complete terms, and denies the remaining allegations in paragraph 16 of the

Counterclaims.

17. BTL admits that it in October and November of 2016 it had a maintenance program that was available to qualified and approved drivers who entered into maintenance agreements (“Maintenance Agreements”) with BTL. BTL refers to those Maintenance Agreements for their exclusive terms, denies all allegations in paragraph 17 inconsistent with their complete terms, and denies the remaining allegations in paragraph 17 of the Counterclaims.

18. BTL denies the allegations in the first sentence of paragraph 18 and those provided in footnote 1. BTL lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 18 of the Counterclaims.

19. BTL lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Counterclaims.

20. BTL admits that on or about November 4, 2016, AW executed the Program Agreement attached as Exhibit 5 to the Counterclaims. BTL denies the remaining allegations in paragraph 20 of the Counterclaims.

21. BTL lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 21. BTL denies the remaining allegations in paragraph 21 of the Counterclaims.

22. BTL denies the allegations in paragraph 22 of the Counterclaims.

23. BTL denies the allegations in paragraph 23 of the Counterclaims.

24. BTL lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 regarding estimates and/or invoices sent by Dickenson Fleet Services, LLC or other third parties, to AW’s drivers. BTL denies the remaining allegations in paragraph 24 of the Counterclaims.

25. BTL denies the allegations in paragraph 25 of the Counterclaims.

26. BTL denies the allegations in paragraph 26 of the Counterclaims.

27. BTL denies the allegations in paragraph 27 of the Counterclaims.

28. BTL denies the allegations in paragraph 28 of the Counterclaims.

29. BTL denies the allegations in paragraph 29 of the Counterclaims and further denies that AW is entitled to any relief set forth in the allegations of paragraph 29 of the Counterclaims and accompanying prayer for relief.

COUNT II: BREACH OF CONTRACT

30. Given the Court's dismissal of AW's Counterclaim for Breach of Contract (Count II) (Doc. 46), BTL is not required to respond to the allegations in Paragraph 30. To the extent a response is required, BTL incorporates by references and fully restates its responses to the proceeding paragraphs of the Counterclaims.

31. Given the Court's dismissal of AW's Counterclaim for Breach of Contract (Count II) (Doc. 46), BTL is not required to respond to the allegations in Paragraph 31. To the extent a response is required, BTL denies the allegations in paragraph 31 of the Counterclaims.

32. Given the Court's dismissal of AW's Counterclaim for Breach of Contract (Count II) (Doc. 46), BTL is not required to respond to the allegations in Paragraph 32. To the extent a response is required, BTL denies the allegations in paragraph 32 of the Counterclaims.

33. Given the Court's dismissal of AW's Counterclaim for Breach of Contract (Count II) (Doc. 46), BTL is not required to respond to the allegations in Paragraph 33. To the extent a response is required, BTL denies the allegations in paragraph 33 of the Counterclaims.

34. Given the Court's dismissal of AW's Counterclaim for Breach of Contract (Count II) (Doc. 46), BTL is not required to respond to the allegations in Paragraph 34. To the extent a

response is required, BTL denies the allegations in paragraph 34 of the Counterclaims.

35. Given the Court's dismissal of AW's Counterclaim for Breach of Contract (Count II) (Doc. 46), BTL is not required to respond to the allegations in Paragraph 35. To the extent a response is required, BTL denies the allegations in paragraph 35 of the Counterclaims and further denies that AW is entitled to any relief set forth in the allegations of paragraph 35 of the Counterclaims and accompanying prayer for relief.

COUNT III: UNJUST ENRICHMENT

36. BTL incorporates by reference and fully restates its responses to the proceeding paragraphs of the Counterclaims.

37. BTL denies the allegations in paragraph 37 of the Counterclaims.

38. BTL lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Counterclaims.

39. BTL lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 of the Counterclaims.

40. BTL denies the allegations in paragraph 40 of the Counterclaims and further denies that it received any benefits directly or indirectly from AW that were not provided by AW in consideration of its obligations under the Program Agreement.

41. BTL denies the allegations in paragraph 41 of the Counterclaims and further denies that AW is entitled to any relief set forth in the allegations of paragraph 41 of the Counterclaims and accompanying prayer for relief.

COUNT IV: VIOLATIONS OF OHIO'S DECEPTIVE TRADE PRACTICES ACT

42. BTL incorporates by reference and fully restates its responses to the proceeding paragraphs of the Counterclaims.

43. BTL denies the allegations in paragraph 43 of the Counterclaims.

44. BTL denies the allegations in paragraph 44 of the Counterclaims.

45. BTL denies the allegations in paragraph 45 of the Counterclaims.

46. BTL denies the allegations in paragraph 46 of the Counterclaims and further denies that AW is entitled to any relief set forth in the allegations of paragraph 46 of the Counterclaims and accompanying prayer for relief.

AFFIRMATIVE DEFENSES

BTL incorporates by reference and fully restates its responses to the proceeding paragraphs of the Counterclaims.

1. AW's claims are barred, in whole or in part, by the parol evidence rule.

2. AW's Counterclaims are barred, in whole or in part, by the doctrines of setoff and/or recoupment.

3. AW failed to mitigate its damages.

4. AW's damages, if any, were caused by the contributing, intervening or superseding actions, errors, omissions, or negligence by individuals or entities other than BTL, for whose conduct BTL is not responsible or with whom BTL has no legal relations, and, as such, any action or inaction of BTL was not proximate cause of AW's alleged damages, if any.

5. AW's claims are barred, in whole or in part, by the applicable statute of limitations.

6. AW's claims are barred, in whole or in part, by the doctrines of laches, waiver, estoppel, and/or unclean hands.

7. AW's claims are barred, in whole or in part, by the independent duty and economic loss doctrines.

8. AW's claims fail, in whole or in part, to state a claim upon which relief can be

granted or for which the damages sought can be awarded.

9. AW is not entitled to recover any punitive damages because BTL at all times acted in good faith and without scienter, intent or knowledge of any alleged wrongdoing.

10. BTL serves notice that it intends to rely upon and assert all defenses that may become known or available during the course of discovery in this proceeding and hereby reserves the right to amend this Answer to assert any and all such defenses.

PRAYER FOR RELIEF

Wherefore, BTL requests the following relief:

- a) That AW's Counterclaims be dismissed, with prejudice, and that AW recover nothing;
- b) That BTL be awarded its costs, expenses, and reasonable attorneys' fees; and
- c) That BTL be awarded such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jacob D. Rhode

Jacob D. Rhode (0089636) (Trial Attorney)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing were served upon all counsel of record via the Court's CM/ECF system on this 15th day of September, 2021.

/s/ Jacob D. Rhode

Jacob D. Rhode